

WAYNE C. WILLIAMS
(ON RECONSIDERATION)

IBLA 76-71

Decided January 26, 1982

Appeal from decision of the Fairbanks, Alaska, District Office, Bureau of Land Management, rejecting Alaska Native allotment application F-14049.

Petition for reconsideration granted; Wayne C. Williams, 23 IBLA 88 (1975), and decision appealed from vacated; case remanded.

1. Alaska: Native Allotments

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under the provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

2. Alaska: Native Allotments

In sec. 905(d) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that where the land described in an allotment application pending before the Department of the

Interior on or before Dec. 18, 1971 (or such an application as adjusted or amended pursuant to subsection (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power project purposes, notwithstanding such withdrawal, reservation, or classification, the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, as amended, and as such, shall be subject to adjudication or approval pursuant to the terms of this section, provided, however, that if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, as amended.

APPEARANCES: Carmen L. Massey, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Wayne C. Williams has petitioned the Board for reconsideration of our decision, Wayne C. Williams, 23 IBLA 88 (1975), in which we affirmed the rejection of his Native allotment application, F-14049, because he did not present adequate evidence of substantially continuous use and occupancy of the land for a period of 5 years. Appellant had not been given an opportunity for hearing. In Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), the court held that Native allotment applicants were entitled to notice and an opportunity for hearing where there was an issue of fact with respect to an applicant's qualifications. Appellant filed a petition for reconsideration in light of this decision.

[1] First, however, we must consider the following provision of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435, enacted on December 2, 1980:

Sec. 905. (a)(1) Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe either land

that was unreserved on December 13, 1968, or land within the National Petroleum Reserve--Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

Those other paragraphs describe circumstances under which the applications would remain subject to adjudication under the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). 1/

An application for withdrawal of land, which includes the lands sought by appellant, for the Rampart Canyon Power Project was filed January 9, 1963. Public Land Order No. 3520 of January 5, 1965, formally classified those lands as "Powersite Classification No. 445." Appellant stated to the field examiner that he had begun his use and occupancy in September 1962. It is, therefore, clear that appellant had completed less than 5 months of use and occupancy when the lands were segregated from disposition by the application of January 9, 1963.

[2] The Alaska National Interest Lands Conservation Act, supra, however, specifically provides for lands withdrawn for powersite or power project purposes:

(d) Where the land described in an allotment application pending before the Department of the Interior on or before Dec. 18, 1971 (or such an application as adjusted or amended pursuant to subsection (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power project purposes, notwithstanding such withdrawal, reservation, or classification, the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, as amended, and as such, shall be subject to adjudication or approval pursuant to the terms of this section:

1/ In addition to the filing of a protest, such circumstances include a determination that the land is valuable for certain minerals, or a determination that the application describes land in a previously established unit of the national park system or in a state selection but where the allotment is not within the core township of a Native village.

Provided, however, That if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, as amended * * *.

(Section 905(d)).

The record shows no reason, therefore, why appellant's allotment application should not be approved under section 905. There appear to be no valid existing rights in conflict with the application, since there is no allegation that the described land is included as part of a project licensed under the Federal Power Act of 1920. Appellant's application was pending before the Department on December 18, 1971. Where a Native allotment applicant meets the requirements of subsection 905(a)(1), failure to provide adequate evidence of use and occupancy does not bar approval of the allotment application. The State Office, therefore, should hold appellant's application for approval, subject to any action which may have arisen before the end of the 180-day period which would preclude approval under subsection 905(a)(1) and require adjudication pursuant to the provisions of the Native Allotment Act. Jack Gosuk, 54 IBLA 306 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our decision in Wayne C. Williams, supra, and the decision appealed from are vacated, and the case remanded for further action consistent with this opinion.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

